

) Application No. DC-71/NUSF-53

) POST-HEARING BRIEF OF  
) COMPLAINANTS

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**POST-HEARING BRIEF OF COMMISSION STAFF**

## I. Summary

The evidence submitted in the proceeding and presented at the hearing held on July 20, 2006 in Valentine, Nebraska, clearly demonstrates that Qwest violated Commission rules and regulations and Commission orders. The customers in the rural areas of the Valentine exchange for the past 14 months and beyond have experienced chronic and repeated problems with their telephone service provided by Qwest or via Qwest equipment and systems. The customer

problems are a direct result of Qwest's failure to replace, update, repair and in general maintain the plant in the Valentine exchange in a condition consistent with adequate service. Qwest allowed the physical plant in the exchange to deteriorate to such a point that Qwest was unable to provide adequate service to subscribers of the Valentine exchange. Only after the frustration of the subscribers in rural Valentine reached levels prompting them to call outside groups for help, like the Commission, did Qwest finally begin to respond to the situation in Valentine. With Qwest's clear violation of Commission rules, regulations and orders, Staff recommends Qwest be administratively fined and be required to reimburse NUSF for money received for Valentine that was not invested in Valentine. Staff also includes a Compliance Plan proposal which includes alternatives to fines and reimbursements, but requires further action and reporting by Qwest.

**II. Commission rules and regulations and orders require certificated carriers and Universal Service Fund recipients, like Qwest, to provide adequate service to its subscribers.**

Certificated carriers in the state of Nebraska are required under Commission rules and regulations to provide adequate service for their subscribers. Section 2.02A of Title 291 Neb. Admin. Code, Chapter 5, provides,

2.02A Each exchange carrier shall provide adequate access line service. In determining whether the access line service provided by an exchange carrier is adequate, *the Commission's consideration will include, but shall not be limited to*, the adequacy of the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, customer complaints, the nature of access line service offered by the carrier and the nature of the access line services desired by the public served. (Emphasis Added).

Adequate or adequacy is a legal term of art similar to reasonable or equitable. There is no specific formula for determining when any carrier's service is "adequate." The Commission is tasked with the duty of looking at the totality of the circumstances and then making a determination as to the adequacy of any carrier's service. Section 2.02A provides some specific areas of consideration in the adequacy analysis by the Commission, such as the carrier's plant and equipment, the number and nature of service interruptions, trouble reports, and customer complaints. Additionally, the Commission is expressly given the authority to consider any issue,

factor or topic it deems relevant in the determination of adequacy of service. Those specific considerations listed in Section 2.02A are where the Commission's analysis of the adequacy of Qwest's service in Valentine is to begin, not a limitation on what the Commission may consider, in making its determination.

Qwest has maintained during the entire proceeding that it is providing the type of service required by the Commission. Qwest argued in their answer and at the hearing that it had not violated Section 2.04C,<sup>1</sup> which details an objective standard for trouble reports received by a carrier of less than six trouble reports per 100 lines averaged over a six month period. Qwest argued that legally it was doing what the Commission requires since they never reached the six percent average level in the Valentine exchange. The Departments never alleged that Qwest failed to meet the objective of Section 2.04C. Section 2.02A is clear that trouble reports are just one factor to be considered in determining adequacy of service.<sup>2</sup> The average trouble report measure contained in Section 2.04C is not the measure by which adequacy of service is determined.

Certificated carriers are also required under Commission rules to maintain their equipment and plant in a manner consistent with adequate service and safety. Section 2.08B provides,

2.08B Maintenance shall include keeping all plant and equipment in a good state of repair consistent with *safety and adequate service performance*. Broken, damaged or deteriorated parts which are no longer serviceable shall be repaired or replaced. . . Electrical faults such as leakage or poor insulation, noise induction, cross-talk or poor transmission characteristics, shall be corrected to the extent practicable within the design capability of the plant affected. (Emphasis Added).<sup>3</sup>

Qwest allowed the outside plant in the Valentine exchange, the cable and carrier systems, to deteriorate to such an extent that it was unable to provide adequate service. The deterioration was more readily apparent in the rural areas of the exchange due in part to the length of the rural cable routes. By waiting until the problems with the plant in Valentine became chronic before beginning to take any action, Qwest failed in its affirmative duty to maintain its plant in a good state of repair. The experiences shared by the witnesses at the July 20, 2006 hearing clearly indicate the Qwest plant was not in a good state of repair.

<sup>1</sup> 291 Neb. Admin. Code, Ch. 5, Rule 2.04C.

<sup>2</sup> See 291 Neb. Admin. Code, Ch. 5, Rule 2.02A.

<sup>3</sup> 291 Neb. Admin. Code, Ch. 5, Rule 2.08B.

In Progression Order No. 1 in Docket No. NUSF-26,<sup>4</sup> the Commission incorporated Sections 2.02 and 2.08 of the Telecommunications Rules and Regulations as service quality standards which all eligible telecommunications carriers are required to follow. Qwest is an eligible telecommunications carrier pursuant to Nebraska Administrative Code, Chapter 10, Sections 004.01 and 004.02. Qwest receives millions of dollars from the Nebraska Universal Service Fund to help offset the cost of providing service in high cost, rural areas, such as the Valentine area. By failing to invest in the Valentine exchange to maintain and upgrade its plant and equipment in a manner consistent with adequate service, Qwest has violated the service quality standards for eligible telecommunications carriers in the state of Nebraska.

### **III. Qwest failed to provide and maintain adequate service in the Valentine exchange.**

Twelve customers from rural Valentine testified during the July 20, 2006, hearing. These twelve customer witnesses represent only a fraction of the customers served by Qwest in rural Valentine. Based upon the trouble report and repair ticket data submitted by Qwest in response to the Staff's data requests, the persistent and continuing problems experienced by the twelve customer witnesses are neither unique nor isolated in nature. The experiences of the customers who testified are broadly symptomatic of the experiences of all the subscribers in the rural areas of the Valentine exchange, as demonstrated by data contained in Qwest's own trouble reports. It would be practically impossible to interview and investigate all of the customers in the Valentine exchange, or even those in rural Valentine only. The testimony of the witnesses served to give the Commission a taste of the repeat and chronic problems experienced by rural subscribers throughout the Valentine exchange. Numerous outages, static, popping, crackling, and other noises, cross-talk and periods of continuous "half-rings," were reported again and again by the customer witnesses. Problems explicitly listed in Section 2.08B, namely, noise induction, cross-talk and poor transmission characteristics were repeatedly experienced by the customers as well.

The customers the Commission heard from were from diverse areas of the exchange and the records of the outages and trouble reports for the entire exchange show that these problems were occurring exchange-wide. Beginning in June of 2005, Qwest's records indicate a

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<sup>4</sup> In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism, Application No. NUSF-26, Progression Order No. 1, (July 23, 2002).

significant increase in service interruptions to customers lasting in excess of 24 hours. Trouble reports filed by Valentine customers, and repair tickets opened by Qwest as a result of those trouble reports increased significantly as well. The fifteen customers that contacted the Commission concerning their service went without phone service a minimum of 43 days or 1,032 hours in 2005 and 2006. In October 2005 alone, the customers in Valentine lost over 29 days. These numbers do not include service outages that lasted less than 24 hours. These same customers reported 112 outages lasting less than 24 hours during the same time period.

A common theme heard from the customer witnesses was their frustration with the inability of Qwest to provide lasting solutions to their phone problems. Time and time again, Qwest would send out technicians to perform a variety of repairs in an attempt to solve the problems; however, the same problems, static, intermittent ringing, cross-talk, and service outages, continued to reoccur. Many customers testified that they are on a first name basis with the Qwest technicians because the techs have come out to their residences so often.

Joel Kennedy testified that sometimes it was less than an hour after the tech had left before the problem reoccurred.<sup>5</sup> Mr. Kennedy stated, "They [the Qwest technicians] would come to the house [restore the] phone service [then] they would leave and maybe it was later that night and it was out again. It was very frustrating because you saw how long hours the techs had to work, and they couldn't fix the problem, it became frustrating."<sup>6</sup>

Kristi Colburn testified, that losing service was a daily occurrence. Having service for three or four days in a row would get her hopes up that it was finally fixed, and then the problems would reoccur.<sup>7</sup> Ms. Colburn stated, "Sometime I got so frustrated, I wouldn't call, but then you would finally start calling again because it needed to be fixed."<sup>8</sup>

Lisa Kruger didn't report every problem because, as she stated, "it was just so aggravating because - I would call you, you tell me you fixed the problem, and then two days later, I would have noise on the line again, all the time. So, finally, we would just get tired of calling them because they are not going to do anything but then last summer, I just couldn't take it any more."<sup>9</sup>

The customer witnesses became very familiar with calling customer service to report problems with their phone. They literally spent hours of time on the phone with Qwest in the

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<sup>5</sup> TR 51

<sup>6</sup> TR 52:13-18

<sup>7</sup> TR 68:10-14

<sup>8</sup> TR 68:18-21

<sup>9</sup> TR 21:14-21

past 18 months trying to get help. Evelyn Foster called in 27 times to report trouble on her phone lines. Roy Breuklander, the owner and operator of Sunnybrook Farms, called Qwest 14 times, Kristi Colburn called to report trouble with her service 28 times. Clare and Joel Kennedy called 22 times in 12 months in an attempt to get their phone service fixed. Lisa Kruger, whose family owns and operates a guest ranch, called Qwest 13 times. Shannon Ravenscroft called in 19 reports. Michelle Perrett every spring and fall has severe static which prompted her to call 5 times in just the last 9 months. The Wolfendens have dealt with customer service 15 times since February of last year. Just considering the reports Delores Colburn made in 2005 and 2006, she has called 28 times. Stan Hanson, the owner and operator of Fritz's Island Campground called 9 times. Liz Ravenscroft called 5 times since she moved to her new family's ranch in September 2005. Annie Kime on her personal line and business lines called 18 times. All together, the 15 customers that contacted the Commission filed a total of 207 trouble reports.

The record is clear, however, that the number of times these customers called is just the proverbial tip of the iceberg. Mr. Wolfenden, Mrs. Kime, Ms. Shannon Ravenscroft, among others, testified that they did not call to report their troubles to Qwest every time they occurred. As Mrs. Kime testified, "So, I probably didn't call like I should have, but I also work. I cannot spend all my time on the phone calling Qwest or tying up my phones to call Qwest."<sup>10</sup> Mr. Wolfenden estimated he only called in to report his problems 10% of the time.<sup>11</sup> Shannon Ravenscroft testified, "I was good at the beginning, but I have four children. I don't have time to be on the phone all the time, and I wasn't getting anything but an automatic thing that said you were repaired. Within two hours, it would be down again. So, to me, I was frustrated and figured it wasn't worth my time."<sup>12</sup>

The phone service the customers of rural Valentine have been receiving, as demonstrated by the customer witnesses, has been far from adequate. Furthermore, the problems experienced by these customers are continuing. Many witnesses brought calendars and printouts to the hearing on which they had kept track of the problems they had been experiencing up to the very day of the hearing. Mr. Kennedy, Ms. Perrett, and Ms. Kime testified to having service outages the week of the hearing. The Ravenscrofts, both Liz and Shannon, testified to around 36 hours of service outage July 2 through 4, 2006, and outages of varying lengths on June 30, 2006. Mr. Hamling and Mr. Wolfenden reported continued problems with noise on their line at the hearing.

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<sup>10</sup> Tr 127:4-6

<sup>11</sup> See Tr 110

<sup>12</sup> TR 86:16-22

The objective standard in Section 2.04C,<sup>13</sup> cited frequently by Qwest during this proceeding, of six trouble reports per one hundred lines averaged over a six-month period, indicates very little in an exchange with the size and demographics of the Valentine exchange. Since the objective standard is an average over the entire exchange, the problems in the rural areas of the exchange were averaged with all the lines in the city of Valentine, allowing the problems to be virtually hidden. Qwest would have to receive an average of 90 trouble reports in a six-month period to reach the six percent number. Further, Qwest would have to receive an average of 120 trouble reports over a six-month period before Qwest would be required, pursuant to Section 2.04C, to initiate an improvement plan.<sup>14</sup> While these averages and percentages may be relevant to the inquiry into adequacy of service, they are not controlling. Once again they are simply one component for the Commission to consider in making a decision concerning adequacy of service. Section 2.02A identifies trouble reports as a factor to be considered in determining adequate service. It does not mention that 2.04C targets must be reached. If it did, it would be redundant to 2.04C. In this case, the excessive number of trouble reports against Qwest in the rural areas of the Valentine exchange clearly weigh in favor of a finding in inadequate service.

Qwest's failure to properly maintain its Valentine plant and its further failure to invest the resources required to remedy the situation constitutes a safety risk in further violation of Section 2.08B. The reality in rural Valentine is that residents rely on landline service. Wireless service is either entirely unavailable or unreliable at best. The Wolfendens and Ravenscrofts can on occasion receive wireless service with an analog bag phone if they drive to the top of a hill to get reception. These rural customers live miles from their nearest neighbor and are a far distance from the city of Valentine.

The recent wildfires in the Valentine area served as a vivid reminder of just how important landline phone service is to the lives of the people living in rural areas. Ms. Foster testified, "I have often thought if there was a wild fire, we couldn't get anywhere quick enough to get help. These last few days has made us think about that again."<sup>15</sup> The Ravenscroft and Perretts among others have small children and phone service is their sole connection to emergency medical

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<sup>13</sup> 291 Neb. Admin. Code, Ch. 5, Rule 2.04C.

<sup>14</sup> See 291 Neb. Admin. Code, Ch. 5, Rule 2.02C.

<sup>15</sup> TR 45:10-13

services should the need arise, as Shannon Ravenscroft described when her son fell and was seriously injured.<sup>16</sup>

Others like the Wolfendens had to wait sometimes hours on top of a hill with a bag phone for a post-operative call from the nurse.<sup>17</sup> A hand on the Ravenscroft ranch could not stay in contact with his wife who was in the hospital in Valentine in premature labor because his landline phone service was out so frequently.<sup>18</sup> Kristi Colburn's children board in Valentine during the school year and she, like any parent, wants to stay in touch with her children from the ranch, an option that was often unavailable due to her phone service being out.<sup>19</sup> These situations are just simply unacceptable in 2006. Customers in Valentine deserve better and, under state law an Commission regulation, have the right to expect better. Qwest cannot be allowed to continue on with business as usual.

**IV. Qwest has failed to take responsibility for the situation in the Valentine exchange and has failed to offer persuasive evidence that its proposed remedial efforts will solve the problems.**

Qwest's answer to the problems experienced by the rural customers is GoDigital. Qwest is deploying GoDigital to replace the older, obsolete analog carrier system utilized by Qwest in the Valentine exchange. However, GoDigital is a carrier system. It runs over the **same cable** as the old analog carrier system. Further, not only does GoDigital run over the same cable, it sends four (4) times the amount of power over the old cable as the analog system did. When Qwest turned up GoDigital in portions of the exchange the number of service outages reported dramatically increased. The southwestern loop, which serves the Ravenscrofts and Wolfendens, is 63 miles in lengths. It represents the longest loop that GoDigital has ever been deployed on, according to Qwest's engineer, Syed Hussain.<sup>20</sup> At turn up, GoDigital experienced extensive problems and was dropping 20 to 50 times per day. These drops resulted in cut off calls and service outages for the customers on those loops. Mr. Hussain testified that the problems with GoDigital had been fixed; however, the Ravenscrofts reported an outage of approximately 36 hours on July 2, 2006, to July 4, 2006.

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<sup>16</sup> TR 90:9-17

<sup>17</sup> TR 113

<sup>18</sup> TR 89

<sup>19</sup> TR 72

<sup>20</sup> TR 254:13-17



Qwest spent large amounts of time talking about and explaining the benefits of the new GoDigital carrier system. However, Qwest's discussion of GoDigital had a confusing dichotomy. On one hand Qwest touted the benefits of GoDigital and claimed that GoDigital was going to be the solution for all the problems of which the customers in the exchange were complaining, as demonstrated by the following exchange between Qwest attorney, Tim Goodwin, and Qwest Witness, Robert Hubbard who is a director within the Qwest Technical and Regulatory Group of the Public Policy Organization:

Mr. Goodwin: . . . what did Qwest think would be the best way to solve the problems that they were seeing in Sparks?

Mr. Hubbard: To place the GoDigital carrier system.<sup>21</sup>

And again we heard from Mr. Hussain, the Qwest engineer that Qwest called specifically to discuss the GoDigital system:

Mr. Goodwin: Do you believe that the service quality problems that have been testified about today are being solved by the GoDigital systems?

Mr. Hussain: I believe so.<sup>22</sup>

So Qwest offered to the Commission the GoDigital system as the remedy for the problems they were hearing from the customers. But at the same time, Qwest also made GoDigital the biggest culprit of the problems that the Commission had been hearing. Qwest Director of Network Operations, Mary Pat Cheshier, testified:

Mr. Goodwin: Based on your experience working and managing all the problems that we have heard about today, what do you think is the biggest contributing factor?

Ms. Cheshier: The biggest contributing factor is the GoDigital platform that we deploy here, and identifying additional

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<sup>21</sup> TR 244:15-18

<sup>22</sup> TR 251:10-13

areas within this geography the very long routes that we learned additional remedies to handle that.<sup>23</sup>

While touting the benefits of the digital carrier system, Qwest failed to address the fundamental issue. A carrier system is only as good as the cable it runs over. It is the Staff's position that the cable in the Valentine exchange is old and the root cause behind the majority of the problems experienced by customers. Ms. Cheshier testified that the cable utilized by Qwest in the exchange is approximately 25 years old.<sup>24</sup> Mr. Hubbard admitted in response to a question by Commissioner Vap, that Qwest had not done soil and geological studies to determine the effect that the unique sandy soil and climate of the Valentine exchange would have on the life span of buried cable.<sup>25</sup> Mr. Hubbard testified in response to questioning by Commissioner Boyle as to when Qwest replaces cable: "When a cable [is] showing deterioration, I guess."<sup>26</sup> However, Mr. Hubbard could articulate no standard used by Qwest to determine when cable should be replaced.<sup>27</sup>

Staff, due to time constraints, was not able to conduct the extensive testing necessary to pinpoint the exact sections of cable in the plant that should be replaced. However, the existence of a serious problem with the cable in the Valentine exchange is not in doubt. There is no other explanation for the number and nature of the problems experienced by the customers in the rural parts of the Valentine. Don Gray, technical analyst for the Commission, testified that the type and frequency of the problems experienced by the customers and the numerous failed attempts by the technicians to remedy the problems all indicate a problem with the plant employed by Qwest in the Valentine exchange, and more specifically in his opinion, the cable.<sup>28</sup>

Mr. Hussain admitted in his testimony that Qwest had just performed basic testing on the lines when it originally turned up the GoDigital.<sup>29</sup> Only upon recommendation by the GoDigital company did Qwest begin to run further, more sensitive tests, in an attempt to understand the problems experienced by the system and the instability of the system over the longer loops of the Valentine exchange. Ms. Cheshier testified that in her opinion not all of the problems reported by the customers could be attributed to the cable, yet offered no alternative explanations for all

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<sup>23</sup> TR 214:3-11

<sup>24</sup> TR 184:1-3

<sup>25</sup> See TR 227-229

<sup>26</sup> TR 229:17

<sup>27</sup> TR 229:21-23

<sup>28</sup> TR 166:16-25

<sup>29</sup> TR 256:14-20

of the problems the customers faced. As of the date of the hearing, Qwest was just beginning to conduct further tests so the condition of much of the cable in the rural parts of the exchange remains questionable.

**V. Based on Qwest's clear violation of Commission rules and regulations, Commission staff recommends the Commission take decisive action to remedy the situation.**

The testimony of the customer witnesses demonstrates that phone service in rural Valentine served by Qwest is not adequate and after working on the problems for over a year, Qwest still has not remedied the problems. The problems are still occurring. The witnesses and evidence leaves no argument that problems existed in the Valentine exchange; and these same problems continue to plague the customers of rural Valentine served by Qwest. While the staff does not dispute that Qwest has attempted to remedy the problems, any mitigation by Qwest of some of the problems with the exchange does not negate the problems experienced previously by the customers of the exchange or absolve Qwest of its failure to provide adequate service to its customers for the past 18 months. Because of Qwest's failure to upgrade and maintain its plant and the resulting aggravation and frustration of its paying customers, and in order to ensure adequate and reliable service in the future, the staff recommends the following course of action to the Commission.

**A. Compliance Plan**

The Staff recommends that Qwest and the Commission enter into a Compliance Plan that recognizes the past failures of Qwest to provide adequate service, sets out specific remedies for the current problems in the Valentine exchange, and sets guidelines for action by Qwest in the Valentine exchange in the future. Qwest should acknowledge that for a period of at least 14 months from June 2005 through July 2006 it provided inadequate service to subscribers in the rural Valentine exchange, that is, those subscribers in the Valentine exchange served on cable routes that utilize a carrier system (those subscribers will hereafter be referred to collectively as "Rural Subscribers"). Under the provisions of any Compliance Plan, Qwest should be required to do what is necessary to begin providing adequate service to the Rural Subscribers in accordance with any timelines set forth in the Plan. Qwest should be required to commit to

providing adequate service to the Rural Subscribers on an on-going and permanent basis, in accordance with any timelines set forth in the Compliance Plan.

The Staff recommend that any Compliance Plan entered into by Qwest and the Commission be in effect from the date of the Commission order for a minimum period of two (2) years and thereafter until ended or modified by further order of the Commission.

The Staff additionally recommends that, in the interest of accountability and transparency, any Compliance Plan between the Commission and Qwest be a public document. The Commission and Qwest have an obligation to the customers in the Valentine exchange and other subscribers of telephone service from any provider to be open about any remedial action that will be ongoing to address their concerns.

Any plan for testing, replacement or repair of the physical plant in Valentine should include clear deadlines for the completion of the projects and specific, predetermined fines should Qwest fail to meet the deadlines on the projects as determined by the Commission. The Staff recommends that the Compliance Plan include the following four areas.

#### **1. NUSF/Investment**

According to Commission records, Qwest has received approximately \$12 million in NUSF support since September 1999 for the Valentine exchange. Including access charges, the Commission Staff estimates that since the mid-1980s Qwest has received at least \$30 million in implicit and explicit Universal Service subsidies for the Valentine exchange. In fact, the Valentine exchange receives the most NUSF support of any exchange in Nebraska. Staff analysis indicates that as much as \$8 million of NUSF support that Qwest has received since 1999 has not reinvested back into the Valentine exchange in accordance with the Commission's Universal Service policies. Therefore, Staff recommends that Qwest be required to invest an additional \$3 million into the Valentine exchange in the form of significant cable replacement by December 31, 2007. What cable should be replaced will be discussed under Section 2 of this Compliance Plan proposal.

In addition, Qwest should report annually to the Commission all investments made by Qwest in the Valentine exchange. The report should indicate all monies spent by Qwest to upgrade, maintain, or replace portions of its indoor or outdoor plant in the Valentine exchange. All investments made by Qwest in the Valentine exchange should be documented indicating

whether any project financed during the year is ongoing or completed and, for ongoing projects, include the estimated completion.

**2. Qwest should be required to take steps to resolve the service quality issues in rural Valentine.**

**a. Testing and Repair**

Under any Compliance Plan, Qwest should be required to inspect and thoroughly test each segment of cable on all five (5) rural cable routes in the Valentine exchange. The Staff recommends that any testing include the segment methodology mentioned in the testimony of Don Gray. The Commission and Qwest should determine mutually agreed upon parameters for test results to determine if a section of cable is substandard and should be replaced.

Upon request of the Commission, Qwest would conduct additional testing on any cable, as deemed necessary by the Commission. Qwest should share all test results with the Commission, including any testing that has already been conducted, indicating the dates that such tests were conducted. All testing should be phased to minimize and spread out service outages. Qwest should be further required to notify any customers potentially affected by the tests a minimum of 24 hours in advance of the test. Staff recommends such testing be completed on or before December 31, 2006.

Any section of cable that tests substandard, as per the agreed upon parameters should be replaced in its entirety, from active device to active device. Qwest should not be allowed to splice around bad sections of cable, thereby creating two more weak points upon which further problems could arise. Any cable replacement required should then be installed as soon as practicable after any test shows a cable segment is substandard, though no later than June 30, 2007. Any extensions of the June 30, 2007, deadline would be subject to Commission approval upon request by Qwest.

**b. Inside Wiring**

In lieu of immediate administrative fines Staff recommends that Qwest agree to inspect, test, and, as necessary, repair or replace the inside wire of the primary premise of any Rural Subscriber who filed a trouble report since June 2005 through the date of the Commission order. The Commission and Qwest would need to work with NT&T to develop a plan to involve NT&T and the affected subscribers of NT&T in these processes. Staff recommends setting a deadline of October 31, 2006, for completion of all inspection and testing of inside wiring, and all repairs

indicated by such testing be completed by December 31, 2006. Prospectively, Staff suggests that Qwest also be required under the Plan to inspect, test, and if necessary, replace the inside wire of the primary premise of any rural subscriber that calls in a trouble report for one year from the date of the Commission order in this docket.

**c. Dedicated Customer Service Representative**

Staff further recommends that Qwest appoint a dedicated Customer Service Representative (CSR) who will call each Rural Subscriber of the Valentine exchange monthly for six (6) months from the date of the order, to inquire about the quality of the subscriber's telephone service. The CSR should provide to each Rural Subscriber contact information, including the name of the CSR, a toll free direct line to the CSR, and the email address for the CSR. Once again the Commission and Qwest would need to work with NT&T to develop a plan to involve NT&T and the Rural Subscribers who are customers of NT&T in these processes. Qwest should then report monthly to the Commission the date and time each Rural Subscriber was contacted by the CSR and the response of the subscriber to the inquiry by the CSR as to the quality of the Rural Subscriber's telephone service. Qwest shall also report any contact initiated by a Rural Subscriber to the CSR's direct line or email, including copies of all emails received and sent by the CSR.

**3. Reporting and Accountability.**

For the period of the Compliance Plan, Staff recommends Qwest submit monthly status reports to the Commission no later than the 15th day following the end of the reporting period, that includes the following information:

- a. All repair, upgrade, and maintenance activity in the Valentine exchange, including project/repair location, project/repair description, and any monies invested by Qwest.
- b. The monthly trouble report rate for retail and wholesale Rural Subscribers.
- c. Individual trouble reports supporting the reported trouble report rate in section (b).
- d. Each service outage reported by retail and wholesale Rural Subscribers, including the date the outage was reported, the duration of the outage, and when the outage was cleared.

- e. All instances of repeat trouble reported by retail and wholesale Rural Subscribers. Repeat should be defined as the customer reporting the same or similar problem as a prior trouble report filed by that same customer within the preceding six (6) months.
- f. All reports by the CSR including the date and time each Rural Subscriber was contacted by the CSR, the response of the subscriber to the inquiry by the CSR into the quality of the Rural Subscriber's telephone service, and any contact initiated by a Rural Subscriber to the CSR's direct line or email and copies of all emails received from a Rural Subscriber and sent by the CSR to a Rural Subscriber.
- g. A report on the status of the GoDigital system including any testing and inspections of the GoDigital systems and the results of such testing, all repairs or replacements of any defective equipment in the system, and the date and time of all dropped links and resets of the system during the month.

**a. Future Inadequate Service: Remedial Credits and Administrative Fines**

Staff recommends that a "Threshold Standard" of two (2) trouble reports per one hundred (100) rural customers, or those customers served on a cable route utilizing a carrier system in the Valentine exchange, per month in the Valentine exchange be established under the Compliance Plan. Mr. Hubbard testified that statewide Qwest's statewide average trouble reports are fewer than two (2) per one hundred (100) lines.

The staff recommends that the trouble reports for the rural areas of the Valentine exchange be averaged monthly. If the trouble report rate exceeds the Threshold Standard in any one month, Qwest would then be required to issue a remedial credit to every rural retail and wholesale subscriber in the Valentine exchange in the next billing cycle. The staff recommends the remedial credit be \$20 for each rural access line for each month in which the Threshold Standard is not met during the preceding month.

Qwest's monthly trouble report should include all trouble reports, regardless of whether any specific trouble report is used in calculating the Threshold Standard. If any trouble reports are excluded from the calculation of the Threshold Standard, Qwest should indicate which trouble reports were excluded and the reason for any such exclusion. Any trouble reports

excluded by Qwest due to force majeure events, problems caused by customer inside wiring, or other causes outside of Qwest's control shall be subject to the review and reconsideration of the Commission.

Further, the Staff suggests that after Qwest has had time to conduct testing and replace or repair defective and substandard plant, automatic administrative fines be imposed under the Plan if and when Qwest exceeds the Threshold Standard. Staff recommends that after June 2007, if the Threshold Standard is not met in any month, an automatic fine of \$10,000 per month be imposed upon Qwest under the terms of the Plan.

#### **4. Monthly Meetings between Qwest and Commission Staff**

Commission Staff recommends monthly meetings with Qwest to discuss Qwest's progress regarding trouble reports, service outages, and other service quality measures contained in the Compliance Plan. Staff envisions the meetings occurring at least monthly through December 2007. These meetings wouldn't need to be conducted in person; video-conferencing, and/or teleconferencing would be options. Qwest, Commission Staff, and the Commissioners could alter the meeting schedule by mutual agreement. Any public meetings and/or public workshops the Commission deems necessary or productive would be held at the discretion of the Commission.

#### **5. Recognition to Customer Complainants**

Commission Staff is of the opinion that the Rural Subscribers, especially those who filed complaints with the Commission and testified before the Commission at the hearing, should receive some recognition from Qwest of the extensive and chronic problems with their telephone service. Therefore, Staff recommends that any Compliance Plan include a provision whereby Qwest will issue a check directly to each rural subscriber from the Valentine exchange that complained to the Commission since June 2005 to the date of the Commission order, in the amount of \$500 per access line in recognition of the service quality problems experienced by these subscribers over the last fourteen months. Once again the Commission and Qwest would need to meet with NT&T to develop a plan to involve NT&T and any NT&T customers affected in these processes.



**B. If Qwest fails to adhere to any provision of a Compliance Plan, administrative fines should be immediately assessed against Qwest and Qwest should be required to reimburse the Nebraska Universal Service Fund.**

The Staff's first priority during this entire proceeding has been, and continue to be, to improve the quality of service received by subscribers in the Valentine exchange. It is the staff's position that the Compliance Plan outlined above is the best course to achieving that goal. Based on the evidence in this docket, administrative fines are not only warranted, but also appropriate due to Qwest's failures in so many areas leading to a degradation of the service in the Valentine exchange. In the interests of improving the service quality for the subscribers and encouraging long term, significant improvements and investments in the Valentine exchange, the staff recommends that administrative fines and/or required reimbursement to NUSF not be imposed on Qwest at this time.

However, in the interest of avoiding redundant further administrative proceedings in this matter, the Staff recommends that any order outlining a plan to improve service in Valentine also contain a provision to allow imposition of immediate and predetermined fines in the event that Qwest fails to meet any provision of the agreed upon plan. Further, any failure by Qwest to comply with any and all provisions of any compliance plan endorsed by the Commission, should also give the Commission the authority to immediately demand reimbursement by Qwest to NUSF in a predetermined amount. Failure to have a contingency plan in place in the event of non-compliance by Qwest with any compliance plan, regardless of the specific provisions of that plan, could potentially mean beginning this proceeding all over again. Another complaint proceeding would not in the best interests of the Valentine subscribers, Qwest, Commission Staff, or the Commission. Concerning the specific, predetermined amount of any administrative fines or NUSF reimbursements, the Staff recommends they be based on the record now before the Commission and makes the following proposals.

**1. Administrative Fines**

Attachment A to this brief contains all the trouble reports filed in 2005 up to the date of the hearing, by the 15 customers that contacted the Commission. The attachment details the date

and number of times each customers experienced at outages lasting longer than 24 hours in duration and the date each time the customer contacted Qwest to report trouble. The staff proposes that for every outage exceeding 24 hours in duration that a fine of \$2500.00 be levied against Qwest. For every trouble report filed, the staff recommends that a fine of \$500 be levied against Qwest. Attachment A outlines each outage and trouble report by customer name and calculates a total administrative fine of \$217,500.

## **2. Nebraska Universal Service Fund reimbursement.**

As discussed above, Qwest has received millions of dollars from the Nebraska Universal Service Fund for the express purpose of off-setting the cost of providing service and maintaining plant in rural high-cost areas. As Director Jeff Pursley testified, Qwest received \$12 million for the Valentine exchange since 1999. In 2005 and the first half of 2006 alone, Qwest received \$3.5 million in NUSF monies. Further, Qwest received an additional \$1.1 million last year to assist with the costs of deploying GoDigital, the digital carrier system, under Docket No. NUSF-7.07. Based upon the investment Qwest has made in the exchange, the depreciation schedules, and the rate of return it is earning from the exchange, Qwest has received up to \$8 million from the NUSF fund that it has not invested back into the Valentine exchange.

The Staff is not suggesting that the full \$8 million be reimbursed to the Fund, instead the Staff recommends that the Commission require Qwest to reimburse the Fund \$3 million. NUSF monies were specifically given to Qwest for the Valentine exchange and Qwest has not reinvested those funds in the Valentine exchange. Therefore, the Fund should receive that money back, enabling the money to be used elsewhere for its intended purpose, helping to provide service in high cost, rural areas.

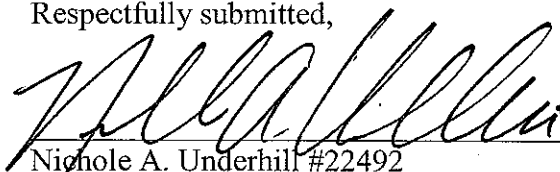
## **VI. Conclusion**

The service quality provided by Qwest to its customers in the Valentine exchange is far from adequate. Qwest has a duty and an obligation to appropriately invest in upgrading and maintaining its telephone equipment in the entirety of its service territories, not just Omaha, Denver and other urban areas. Qwest has failed in its duty and obligation to the subscribers in the Valentine Nebraska area.

The witnesses and evidence at the hearing revealed a situation that the Nebraska Public Service Commission has a duty to remedy. This Commission must not allow Qwest to continue to provide inadequate service to its subscribers in the rural Valentine exchange.

This Commission's determination in this docket will establish what the Commission expects when it requires certificated carriers to provide adequate service. The Staff urges the Commission to send a clear message to all carriers that the situation that Qwest allowed to occur in Valentine will not be tolerated by this Commission. Customers deserve and have the right to demand better, especially from those carriers that receive money from the Nebraska Universal Service Fund.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nichole A. Underhill", is written over a horizontal line.

Nichole A. Underhill #22492

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August 28, 2006

**ATTACHMENT A**

NE PSC v. QWEST CORPORATION Application No. DC-71/NUSF 53

Name	Provider	Location	Phone #	Date of Complaint	Type	Fine Amount
Lisa Krugar	Qwest	Valentine	(402) 376-1124	3/28/2005	noise on line	\$500
				6/6/2005	noise on line	\$500
				6/7/2005	line buzzing	\$500
				6/8/2005	no dial tone	\$500
				1/18/2006	noise on line	\$500
				1/23/2006	static	\$500
				1/25/2006	noise on line	\$500
				1/28/2006	no dial tone	\$500
				1/30/2006	humming	\$500
				2/14/2006	noise on line	\$500
				2/23/2006	noise on line	\$500
				1/24/2005	unknown	\$500
				2/17/2005	unknown	\$500
Roy Breuklander (Sunnybrook Farms)	Qwest	Sparks	(402) 376-1887	7/9/2005	service outage (over 24 hrs)	\$2,500
				7/31/2005	service outage (over 24 hrs)	\$2,500
				8/16/2005	service outage (over 24 hrs)	\$2,500
				5/31/2005	unknown	\$500
				6/15/2005	can't receive calls	\$500
				6/17/2005	no dial tone	\$500
				6/27/2005	no outgoing calls, gets cut off	\$500
				7/8/2005	no dial tone	\$500
				7/9/2005	no dial tone	\$500
				7/16/2005	no dial tone	\$500
				7/17/2005	no dial tone	\$500
				7/31/2005	no dial tone	\$500
				8/9/2005	unknown	\$500
				8/16/2005	no dial tone	\$500
				6/1/2006	static	\$500
				6/8/2006	static	\$500

Clare Kennedy	Qwest	Sparks	(402) 376-8012	6/16/2006	noisy line	\$500
				6/13/2005	service outage (over 24 hrs)	\$2,500
				6/29/2005	service outage (over 24 hrs)	\$2,500
				7/22/2005	service outage (over 24 hrs)	\$2,500
				8/8/2005	service outage (over 24 hrs)	\$2,500
				8/11/2005	service outage (over 24 hrs)	\$2,500
				8/14/2005	service outage (over 24 hrs)	\$2,500
				6/13/2005	unknown	\$500
				6/20/2005	humming	\$500
				6/29/2005	humming	\$500
				7/18/2005	no dial tone	\$500
				7/22/2005	no dial tone	\$500
				8/3/2005	no dial tone	\$500
				8/8/2005	no dial tone	\$500
				8/11/2005	no dial tone	\$500
				8/14/2005	static	\$500
				8/17/2005	no dial tone	\$500
				8/23/2005	no dial tone	\$500
				8/24/2005	no dial tone	\$500
				2/4/2006	no dial tone	\$500
				5/8/2006	no dial tone	\$500
				5/13/2006	static	\$500
				5/19/2006	humming	\$500
				5/26/2006	humming	\$500
				6/6/2006	out of service	\$500
				6/8/2006	static	\$500
				6/13/2006	static	\$500
				6/19/2006	no dial tone	\$500
				7/11/2006	out of service	\$500
Kristi Colburn	NT&T	Valentine	(402) 376-2293	7/5/2005	service outage (over 24hrs)	\$2,500
				8/2/2005	service outage (over 24hrs)	\$2,500
				8/14/2005	service outage (over 24hrs)	\$2,500
				9/18/2005	service outage (over 24hrs)	\$2,500
				5/9/2005	no dial tone	\$500

Delores Colburn	NT&T	Valentine (402) 376-3169			
6/8/2005			unknown	\$500	
6/17/2005			no dial tone	\$500	
6/20/2005			no dial tone	\$500	
6/22/2005			static	\$500	
7/5/2005			unknown	\$500	
7/13/2005			can't receive calls	\$500	
8/1/2005			no dial tone	\$500	
8/2/2005			no dial tone	\$500	
8/4/2005			static	\$500	
8/14/2005			no dial tone	\$500	
8/21/2005			no dial tone	\$500	
8/23/2005			no dial tone	\$500	
8/26/2005			no dial tone	\$500	
9/18/2005			static	\$500	
10/20/2005			no dial tone	\$500	
11/5/2005			no dial tone	\$500	
11/30/2005			unknown	\$500	
12/1/2005			can't receive calls, no dial tone	\$500	
12/2/2005			no dial tone	\$500	
12/13/2005			no dial tone	\$500	
12/15/2005			no dial tone	\$500	
12/19/2005			no dial tone	\$500	
12/26/2005			no dial tone	\$500	
12/30/2005			no dial tone	\$500	
4/3/2006			static	\$500	
4/25/2006			no dial tone	\$500	
6/16/2006			no dial tone	\$500	
7/5/2005			service outage (more than 24hrs)	\$2,500	
7/25/2005			service outage (more than 24hrs)	\$2,500	
11/11/2005			service outage (more than 24hrs)	\$2,500	
12/1/2005			service outage (more than 24hrs)	\$2,500	
4/24/2006			service outage (more than 24hrs)	\$2,500	
2/3/2005			static	\$500	
6/20/2005			static	\$500	
6/22/2005			no dial tone	\$500	
7/5/2005			unknown	\$500	

7/8/2005	no dial tone	\$500
7/10/2005	out of service	\$500
7/13/2005	network interface problems	\$500
7/18/2005	no dial tone	\$500
7/25/2005	no dial tone	\$500
8/14/2005	can't receive calls	\$500
8/23/2005	out of service, static	\$500
8/26/2005	no dial tone	\$500
8/27/2005	no dial tone	\$500
11/2/2005	no dial tone	\$500
11/4/2005	no dial tone	\$500
11/11/2005	no dial tone	\$500
12/1/2005	no dial tone	\$500
12/13/2005	no dial tone	\$500
12/15/2005	no dial tone	\$500
12/19/2005	no dial tone	\$500
12/23/2005	no dial tone	\$500
12/30/2005	no dial tone	\$500
1/23/2006	static	\$500
3/29/2006	no dial tone	\$500
4/14/2006	unknown	\$500
4/24/2006	no dial tone	\$500
6/16/2006	no dial tone	\$500

Annie Kime	Qwest	Valentine	(402) 376-2889	7/8/2005	service outage (more than 24hrs)	\$2,500
			*business line	10/28/2005	service outage (more than 24hrs)	\$2,500
				4/5/2006	service outage (more than 24hrs)	\$2,500
				7/8/2005	unknown	\$500
				9/13/2005	unknown	\$500
				9/26/2005	unknown	\$500
				9/28/2005	unknown	\$500
				10/28/2005	unknown	\$500
				11/11/2005	unknown	\$500
				1/17/2006	unknown	\$500
				4/5/2006	unknown	\$500
			(402) 376-1201	10/11/2005	service outage (more than 24hrs)	\$500
			2nd line	11/9/2005	unknown	\$500

Gary MacLeod	Qwest	Valentine (402) 376-1899	11/12/2005	unknown	\$500
			12/13/2005	unknown	\$500
			9/13/2005	buzzing, no dial tone	\$500
			12/30/2005	unknown	\$500
			1/9/2006	static	\$500
			1/25/2006	calls cut off	\$500
			1/26/2006	no dial tone	\$500
			3/14/2006	line is noisy	\$500
			5/11/2006	static, calls cut off	\$500
			Charles/Evelyn Foster	NT&T	Sparks (402) 376-2709
12/5/2005	service outage (more than 24hrs)	\$2,500			
4/13/2005	noisy line	\$500			
6/2/2005	noisy line	\$500			
11/3/2005	wanted lines tested	\$500			
11/8/2005	no dial tone	\$500			
11/24/2005	no dial tone	\$500			
12/5/2005	no dial tone	\$500			
8/5/2005	service outage (more than 24hrs)	\$2,500			
9/5/2005	service outage (more than 24hrs)	\$2,500			
9/19/2005	service outage (more than 24hrs)	\$2,500			
10/24/2005	service outage (more than 24hrs)	\$2,500			
11/29/2005	service outage (more than 24hrs)	\$2,500			
3/28/2005	static	\$500			
3/30/2005	buzzing	\$500			
3/31/2005	humming	\$500			
4/6/2005	humming	\$500			
6/6/2005	humming	\$500			
6/29/2005	no dial tone	\$500			
8/2/2005	static	\$500			
8/5/2005	static	\$500			
8/29/2005	unknown	\$500			
9/5/2005	no dial tone	\$500			
9/19/2005	buzzing	\$500			
9/23/2005	no dial tone	\$500			
9/24/2005	static	\$500			



10/18/2005	no dial tone	\$500
10/21/2005	no dial tone	\$500
10/24/2005	no dial tone	\$500
11/29/2005	no dial tone	\$500
1/6/2006	static	\$500
1/10/2006	static	\$500
1/11/2006	clicking on line	\$500
1/27/2006	humming	\$500
2/2/2006	static	\$500
3/3/2006	no dial tone	\$500
5/19/2006	static	\$500
5/22/2006	static	\$500
5/23/2006	static	\$500
6/21/2006	no dial tone	\$500

# **Ted Hamling**

NT&T      Valentine      (402) 376-3743

7/27/2005	humming	\$500
12/27/2005	humming	\$500
1/3/2006	static	\$500
1/4/2006	humming	\$500
1/12/2006	no dial tone	\$500
1/27/2006	humming, wants voltage checked	\$500
2/17/2006	static	\$500
5/24/2006	humming	\$500
6/1/2006	static	\$500
7/12/2006	can't receive calls	\$500

# **Shannon Ravenscroft**

Qwest      Nenzel      (402) 376-2332

7/19/2005	service outage (more than 24hrs)	\$2,500
8/30/2005	service outage (more than 24hrs)	\$2,500
11/21/2005	service outage (more than 24hrs)	\$2,500
3/21/2006	service outage (more than 24hrs)	\$2,500
4/20/2005	static	\$500
4/25/2005	static	\$500
5/3/2005	static	\$500
5/11/2005	can't make calls, cut off	\$500
7/8/2005	can't make calls	\$500
7/19/2005	no dial tone	\$500
8/15/2005	out of service, humming	\$500

<b>Liz Ravenscroft</b>	Qwest	Nenzel	(402) 376-1544	8/30/2005	no dial tone	\$500
				9/20/2005	out of service	\$500
				10/19/2005	noisy line	\$500
				11/21/2005	no dial tone	\$500
				11/28/2005	noisy line, clicking	\$500
				12/1/2005	no dial tone	\$500
				12/13/2005	no dial tone	\$500
				3/21/2006	no dial tone	\$500
				4/14/2006	no dial tone	\$500
				4/18/2006	no dial tone	\$500
				4/24/2006	no dial tone	\$500
<b>Michelle Perrett</b>	Qwest	Nenzel	(402) 376-1544	12/5/2005	service outage (more than 24hrs)	\$2,500
				12/1/2005	static	\$500
				12/5/2005	static	\$500
				4/24/2006	no dial tone	\$500
				6/5/2006	can't place calls, screeching on lin	\$500
<b>Kurt Busenitz</b>	NT&T	Valentine	(402) 376-1934	10/28/2005	service outage (more than 24hrs)	\$2,500
				12/5/2005	service outage (more than 24hrs)	\$2,500
				10/19/2005	no dial tone	\$500
				10/28/2005	no dial tone	\$500
				12/5/2005	no dial tone	\$500
				4/12/2006	static	\$500
				4/20/2006	static	\$500
	Qwest NT&T	Nenzel	(402) 376-3165	2/25/2005 (Qwest)	service outage (more than 24hrs)	\$2,500
<b>Stan Hanson</b>				2/24/2005 (Qwest)	no dial tone	\$500
				8/8/2005 (Qwest)	static, gets cut off	\$500
				4/14/2006 (NT&T)	no dial tone	\$500
	Qwest	Sparks	(402) 376-3040 **home	8/30/2005	no dial tone	\$500
				9/3/2005	no dial tone	\$500
				9/13/2005	unknown	\$500
			(402) 376-3791	6/3/2006	no dial tone	\$500
				6/6/2006	no dial tone	\$500

Rick Wolfenden	Qwest	Mullen	(402) 376-1166	**business	7/8/2005	service outage (more than 24hrs)	\$2,500
				6/20/2005	unknown	\$500	
				7/8/2005	unknown	\$500	
				7/16/2005	unknown	\$500	
				8/18/2005	unknown	\$500	
				8/26/2005	unknown	\$500	
Rick Wolfenden	Qwest	Mullen	(402) 376-1166		2/20/2005	service outage (more than 24hrs)	\$2,500
					3/19/2005	service outage (more than 24hrs)	\$2,500
					7/3/2005	service outage (more than 24hrs)	\$2,500
					7/5/2005	service outage (more than 24hrs)	\$2,500
					12/9/2005	service outage (more than 24hrs)	\$2,500
					2/14/2005	service outage (more than 24hrs)	\$2,500
					2/20/2005	noisy line	\$500
					2/20/2005	humming	\$500
					3/19/2005	no dial tone, static	\$500
					3/21/2005	no dial tone, cut off	\$500
					4/3/2005	no dial tone	\$500
					4/30/2005	cut off	\$500
					6/28/2005	no dial tone	\$500
					7/3/2005	clicking	\$500
					7/5/2005	no dial tone	\$500
					10/3/2005	cut off	\$500
					10/11/2005	cut off	\$500
					10/13/2005	cut off	\$500
					12/9/2005	no dial tone	\$500
					12/12/2005	unknown	\$500
					1/31/2006	no dial tone	\$500

<u>Totals (partial)</u>	<u>Total Suggested Fine</u>
service outages over 24 hrs (43)	\$107,500
service outages under 24 hrs (112)	\$56,000
**consists (customer can't receive calls customer can't place calls no dial tone actual outages under 24 hrs. reported	
noise on the line (65)	\$32,500
**consists (noise generally humming static clicking screeching buzzing	
Misc. Trouble Reports (43)	\$21,500
**consists customer cut off network interface problems customer wants lines tested no dial tone (cleared, customer eventual cancelled) unknown	
<u>TOTAL</u>	<u>\$217,500</u>